



October 18, 2002

Ms. Ashley D. Fourt  
Assistant District Attorney  
Office of the Criminal District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2002-5912

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170875.

The Tarrant County Sheriff's Department (the "department") received a request for copies of mug shots pertaining to four specified individuals. You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the department states, and provides documentation showing, that it sent the requestor a letter seeking clarification of the request as it pertained to three of the requested mug shots. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). Based on our review of the information that has been submitted to us, it does not appear, however, that the department has yet received the requested clarification. Thus, we conclude that the department need not respond to the request as it pertains to three of the requested mug shots until it receives the requestor's clarification. We note, however, that when the department receives the clarification, it must seek a ruling from this office before withholding from disclosure any information that may be responsive to the clarified request. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification).

You claim that submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with parts 236 and 241 of title 8 of the Code of Federal Regulations (the "C.F.R.").<sup>1</sup> We note that section 236.6 of title 8 of the C.F.R. provides as follows:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintain, provides, services to, or otherwise holds any detainee on behalf of the [Immigration and Naturalization] Service [(the "INS")] (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

67 FR 19508, April 22, 2002.

You explain that the individual who is depicted in the submitted mug shot is an INS detainee. Based on our review of your arguments, this mug shot, and the appropriate statutes and case law, we agree that the department is required to abide by rules promulgated by INS with regard to INS detainees. *See* 8 C.F.R. § 2.1 (providing that commissioner of INS may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also American Civil Liberties Union of New Jersey, Inc. v. County of Hudson*, 2002 WL 1285110 (N.J. Super. A.D.) (stating that while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government's exclusive and expressed interest in regulating aliens). Consequently, we conclude that the submitted information is made confidential by section 236.6 and, thus, must be withheld from disclosure. *See ACLU*, 2002 WL 1285110 (concluding that because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law requiring disclosure of requested information); *see also English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355,

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes and regulations.

369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Because we base our ruling on federal law, we need not address your remaining arguments for withholding the submitted information from disclosure.

Finally, you also request that this office issue a previous determination allowing the department to withhold from disclosure personal information relating to INS detainees in response to future requests for such information without the necessity of seeking a ruling from this office. We decline to issue such a previous determination at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lt

Ref: ID# 170875

Enc. Submitted document

cc: Mr. Wes Bearden  
c/o Ashley D. Fourt  
Office of the Criminal Attorney  
(w/o enclosures)